

Section 255 based upon the range of accessible products available to the disabled in the marketplace as a whole. The Commission should not apply Section 255 on a model-by-model basis for each product.

While some commentators argued that Section 255 requires every product model to be accessible, or alternatively compatible, in fact, the Access Board's implementation of the readily achievable standard in the ADA context supports a more broad view of compliance.^{17/} As Motorola discussed in its initial comments, accessibility in public accommodations such as hotels and movie theaters subject to the ADA simply requires that to the extent readily achievable, disabled individuals should have a similar general range of choices -- including factors such as quality and price -- as does the general public. ADA Guidelines for Buildings and Facilities, 28 C.F.R. part 36, App. A at 63 (hotels), 56 (movie theaters).^{18/}

^{17/} Moreover, in other contexts where a new regulatory regime posed substantial technological challenges related to product design, Congress has endorsed a broad market view of achieving compliance. E.g., 49 U.S.C. § 32901 (permitting manufacturers to comply with fuel economy goals based upon the average performance of products).

^{18/} Some advocates for the disabled have argued that the language of Section 255, which refers to "the equipment," supports such a model-by-model assessment of compliance. The ADA similarly uses the definite article in reference to "the goods,

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Based upon the ADA analogy, the readily achievable standard, applied in the telecommunications equipment context, should be satisfied if manufacturers provide a range of generally equivalent products that are accessible to the disabled and available at the same prices paid by non-disabled consumers.

The varying and occasionally conflicting accessibility needs of persons with different disabilities virtually dictates an overall-market approach to compliance with Section 255. Within a single disability, needs can vary dramatically. In addition, different disabilities frequently generate conflicting needs. A single person can have multiple disabilities that generate conflicting or divergent accessibility needs.

While universal design holds significant promise for incorporating accessibility features at a reduced cost, many commentators concede that it is not technologically possible now, and maybe not ever,^{19/} to design a single piece of CPE that is

^{18/} (... continued)
services, facilities, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). Even so, the definite article has not been construed in the ADA context to require that every single hotel room or seat in a theater be accessible to the disabled.

^{19/} For wireless CPE, such as cellular phones and pagers, for example, universal accessibility would be extremely difficult, if not impossible. The popularity of these products depends upon portability and compactness. Even if it were technologically possible to design a universally accessible wireless product, it

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universally accessible to all persons with all disabilities.^{20/} Consequently, the only way that CPE manufacturers can realistically accommodate the broad range of disabled customers' needs is to manufacture a broad range of products with a variety of different accessibility features. Disabled customers can then choose the product or combination of products that is best-suited to their needs.^{21/}

Given the range of accessibility needs to be met, it is unrealistic to expect that any single manufacturer could provide this range of products within the limits of the readily achievable definition, which is defined to mean "without much difficulty or expense." 42 U.S.C. § 12181(9). Numerous industry commentators, including TIA, Lucent, Omnipoint, Personal Communications Industry Association ("PCIA"), ITI, Railphone - Amtrak Venture, and Motorola support a whole-market approach to compliance with Section 255. The Commission should adopt such a whole-market approach, which has broad-based industry support,

^{19/} (... continued)
is virtually certain that incorporating accessibility features to accommodate all disabilities into that product would fundamentally alter the nature of the product by dramatically increasing its size. Such a fundamental alteration would not be required by Section 255.

^{20/} E.g., CAN at 11; ITI at 14.

^{21/} This approach is advocated by disabled commentators including Jo Waldron at 9.

and assess compliance with Section 255 based upon the range of accessible telecommunications equipment and CPE available to the disabled in the marketplace as a whole.

CONCLUSION

The Commission should take advantage of the comments generated in response to this NOI by adopting the consensus that has emerged on a number of key issues, including: (1) the need for the Commission to play a significant role in implementing Section 255; (2) equitable application of Section 255 to different types of manufacturers -- large and small, foreign and domestic; and (3) narrowed application of the ADA definition of "disability" in the telecommunications context.

With respect to potentially more controversial issues, the Commission should: (1) exercise extensive substantive review of the guidelines ultimately developed by the Access Board; (2) decline to consider the resources of parent corporations in determining what is readily achievable; (3) apply the readily achievable standard to promote technological innovation by maximizing resources dedicated to accessible product design; and (4) assess compliance with Section 255 based upon the

accessibility of products available to the disabled in the marketplace as a whole.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Mary E. Brooner", is written over a horizontal line.

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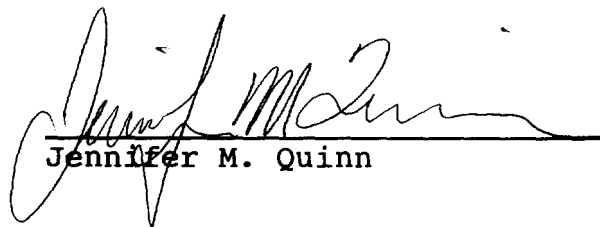
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